SPEECH

— OF —

Hon. J. M. Gibson

ATTORNEY-GENERAL

— ON —

The Liquor Act of 1902

AND —

THE REFERENDUM

DELIVERED IN THE ONTARIO LEGISLATURE

MARCH 5TH, 1902

SPEECH

— OF —

HON. J. M. GIBSON

ATTORNEY-GENERAL

In the Ontario Legislature, on March 5th, 1902, Hon. J. M. Gibson on rising to address the House on the second reading of The Liquor Act of 1902, was received with very cordial applause. He said :—

Mr. Speaker. I congratulate the honourable gentleman (Mr. Whitney) upon the eloquence he has displayed in different parts of his speech. Some times, however, I think he is most eloquent when saying least (Laughter) and at other times when dealing with matters of close argument I find that he is inclined to get lost occasionally. I do not propose, Mr. Speaker, to detain the House very long in replying to the honourable gentleman or to go over ground which has been so ably covered by the Premier in his remarks this afternoon and on the former occasion when he addressed the House. The Honourable gentleman who has just taken his seat has to a great extent addressed his remarks to a criticism of the referendum, to an attack upon the Premier on the ground of inconsistency, insincerity and want of truthfulness in statements which he made in his speeches. He has also urged that if there is to be a referendum it should not be accompanied by the condition requiring a certain proportion of the voters of the Province in favor of the measure. He has taken the ground that the question of prohibition should depend, one way or the other, on the majority of the votes cast, and I think that he is explicit in taking that ground—he has left no doubt where he is on that point. Before the honourable gentleman took his seat he chose to outline his policy on the Temperance question and I think it was a very easy thing for him to give that platform to the public, because, if there ever were platitudes on temperance addressed to this House or to any audience his platform delivered here this evening, was composed of the most extreme platitudes. (Hear, hear.) Does he run any risk by

saying that if returned to power in this House or charged with the responsibility of leadership of the Government, there shall be no politics in connection with the appointment of License Commissioners? Does he take any responsibility in saying that his Government, forsooth, will see the provisions of the law honestly administered? These are platitudes and, like other planks of this honourable gentleman's so called platform, they are so vague and so general that they mean nothing. They are like what he is pleased to call his policy on the great question of Education, and I defy any man in this House or out of this House to-day to state in specific terms what the views of the honorable gentleman on educational matters really are. (Hear, hear.) Vague generalities we are accustomed to, but anything definite—the particular improvements he would make upon our public school course, what he would do when he sets himself to the task of "rounding off the public course for the benefit of 95 per cent. of our school population in this country," using his own words—no one knows; and for the very good reason, that the honourable gentleman does not know himself. (Cheers.) So, also, as to the great question or interest of Agriculture. He now has a policy on that subject. Hitherto he has had no agricultural policy, he and his party simply devoting themselves to unfair criticism of the policy of the Government on that great and important subject—unfair criticism of the Agricultural College, belittling the efforts of the Government in one way and another, and constantly belittling and depreciating the earnest efforts of the Government to promote the best interests of that great department of administration. And what is his policy on agriculture? Five or six more Agricultural Colleges and—platitudes! And so it is with his policy on the Temperance question. I ask anyone who is listening to my voice now if he can distinctly gather from the honorable gentleman's speech an item of anything that is specific or new or which anyone in public life would not say was in accord with his views on license law administration or the temperance question. But Sir, I did not intend to dwell upon these features of the honourable gentleman's speech.

The Referendum Discussed.

My chief object is to discuss the question of the referendum and the propriety of the Government and this House, in this measure being submitted, insisting upon requiring evidence from the people that there shall be such a proportion of popular sentiment behind the measure as will give some assurance of a reasonable enforcement of the law when it is enacted.

Now, as to the adoption of the referendum provision, the Premier's

masterly and comprehensive speech has left very little to be said on that subject. For many years he has made a close study of this subject. Nine years ago, when Minister of Education in the Government of Sir Oliver Mowat, he contributed a monograph to the Canadian Magazine on the question, and a gentleman who takes the responsibility of writing a well-considered article for an important magazine on that subject may be credited at least with having at that time had some views as to it (hear, hear.) So far back as 1893, he wrote an article which of course showed ability—showed that he was thinking about that particular subject, and showed what his views as to the referendum at that time were. In this article he insists upon the necessity of the referendum when any law was being enacted prohibiting the liquor traffic, (hear, hear.) He cited the instructive case of New Brunswick where a prohibitory liquor law was passed in 1855 without a reference to the people and repealed the following year, a result of a prohibition law being enacted without some reasonable assurance that the people were behind the Legislature in connection with legislation of that nature. As a better precedent for legislation he instanced the Local Option Bill of Sir William Vernon Harcourt, Chancellor of the Exchequer, then before the British Parliament requiring a two-thirds vote of the ratepayers to prohibit the sale of liquor in the districts to which it might apply. In addition to this British precedent, the Premier in that article and in his speech the other day referred to the Dunkin Act of 1864, the Scott Act of 1878, the McCarthy Act of 1883 and the various referendum features which each of these laws contained, and then he referred to the great convention of temperance workers in Montreal in 1875 which recommended the passage of a prohibitory liquor law subject to ratification by the people. On the subject of taking the referendum vote separately from the vote at the general election the Premier made use of the following language :—

> "To vote with the Party in a general election is not necessarily the highest effort of electoral intelligence, although it usually exhibits a commendable degree of faith in party leaders. To vote intelligently on a great issue like "prohibition" requires study and reflection. *In forming a judgment, the personal equation of party leadership must be omitted, and the responsibility of solving a problem on its intrinsic merits must be met face to face.*"

Premier Ross' Consistent Position.

These were the views of the leader of this House nine years ago, when he was considering the constitutional aspects of the referendum, when it began in other places to be a subject of more than ordinary consideration ; and I defy honourable gentlemen to take quotations from any source which are more pregnant with meaning in the same space of words than the language I have just read from the Premier's article written nine years ago. "In forming a judgment the personal equation of party leadership must be ommitted and the responsibility of solving a problem on its intrinsic merits must be met face to face." (Cheers). That is what

he insists upon to day. That is what he is insisting upon to day and that is what the great bulk of the population of this province to day ask and approve of. (Cheers). Written nine years ago, if read with the bill now before the House, it completely answers any imputation that in resorting to the referendum the Premier has changed front or that he then disguised or has since altered his views. In the party opposing this bill there has been a change of front, sudden and violent. In his recent speech the Premier traced the laws of Canada for nearly forty years and showed that in all of these laws the principle of the referendum was expressly recognized. Both of the political parties, and the temperance leaders themselves, have long seen the utter futility of any legislation in the direction of prohibition, unless the bill is strongly sustained by a direct poll of the electorate specially taken on that particular bill. The proposal in this Ontario bill to take a direct poll of the people of the Province on the bill, constrained Mr. Borden, the leader of the Opposition in the Dominion House of Commons, to lecture us upon the British Constitution, at the banquet recently given to the leader of the Opposition in this House. But Mr. Borden's missionary zeal does not seem to have extended quite so far as Manitoba, (Applause) for I do not think he had anything to say with reference to the Manitoba referendum on the Act introduced and carried through that Legislature by his old friend, Mr. Hugh John Macdonald—an Act which is already law, which is advanced a stage further than our proposition, which of course is not yet law. The Manitoba Act could be brought into effect by the simple proclamation of the Lieutenant Governor, but it is being submitted notwithstanding the previous plebiscite to the people of the Province in order that there shall be a further sanction and approval of its provisions. Mr. Borden's alarm for the safety of British Institutions is evidently intended alone for Ontario consumption. (Cheers)

Fallacy of "Unconstitutional" Cry.

The cry is raised that a direct poll of the electorate is un-British and unconstitutional. The same cry, Mr. Speaker, has been used against every successive extension of free institutions. It was raised against the introduction of Constitutional Government into Canada, against the ballot, against manhood suffrage, against our Federal system of Government, against our Municipal Institutions (which by the old Tories of that day were termed "sucking republics") against the Municipal enfranchisement of women, against free schools, free libraries, against freedom of the press, against freedom of conscience, in short against every successive extension of the liberties of the people. (Applause).

Principle of Referendum Inherent in the British Constitution

For years, English writers have been pointing out that the principle of the referendum is inherent in the British Constitution, and so of necessity in the Constitutions of all British self-governing colonies. Let me repeat that statement, because the honorable gentleman throughout his speech

returned to the assertion that there was no warrant from British authority for what we are doing. Let me, therefore, repeat, that for years past, English writers of eminence have been pointing out that the principle of the referendum is inherent in the British Constitution. I have no doubt but that it has been the perusal, ten years ago, of articles written on this subject, suggestive papers to be found in magazines and elsewhere, that set the Premier thinking on that subject and resulted in the article which he contributed to Canadian Magazine in 1893. Not only is it claimed by men of eminent authority that the British constitution contains within it the principle of the referendum, but that that principle is also in the constitutions of all British self-governing colonies. In many statutes of the colonies the referendum has been delegated for years to municipalities and corporations.

The Referendum Principle not New.

Now, let the House and the honorable gentleman understand that an important part of my argument is this, that the power of delegating the referendum has been exercised for many years, and I argue further, and this is almost a truism, that no authority can delegate the referendum authority without having had that authority itself. (Cheers.) *It would be contrary to jurisprudence as well as to common sense if the legislature could delegate a power which it itself does not possess.* The extension of the referendum to national questions of great importance has of late years been strongly advocated by English statesmen and jurists of the highest eminence. In 1889 Sir Francis Adams, the British Minister to the Swiss Republic, was directed to make enquiry into the working of the referendum in that country and he reported at great length upon the working of the referendum in Switzerland. Professor Dicey, taking this report as his text in a closely reasoned article in the *Contemporary Review*, strongly advocated the application in England of the referendum to large public general questions of legislation. Professor Dicey has for many years occupied the chair of law in Oxford University, the identical chair occupied many years ago by Blackstone when he delivered those famous lectures, Blackstone's Commentaries, so well known to every lawyer and law student. Professor Dicey is a well known man. In the law courts his treatises are of the very highest authority. And now let us hear what he says respecting the referendum and the distinction that is always to be borne in mind between the application of the referendum and its separation from the ordinary general election. The honorable gentleman has scolded us this evening because we do not submit this question to the people at the general elections. I do not think he will find any authority of eminence who will bear him out in that suggestion.

Professor Dicey's Opinions.

What does Prof. Dicey say—to my mind one of the most eminent authorities living at the present time :—

> "A general election is an appeal to the people, and may, under peculiar circumstances, be made to serve, though in an awkward and imperfect manner, the purposes of a referendum. But we must not be deceived by words. A general election is an appeal to the people; so also is the exercise of the Referendum: but the two appeals differ fundamentally from each other, and their points of difference are for our present purpose of vital consequence. An election, after all, has for its primary and immediate object the appointment of representatives. It is a choice of persons or of parties: it is not a judgment on the merits or demerits of a proposed law. No doubt the choice of members approaches every day more and more nearly to a decision on matters of policy, and at times an election really sanctions or vetoes proposed legislation. The personal element, however, is at every election a matter of moment; a strong candidate may carry a seat by his own individual strength. The main and avowed object, moreover, of electors in voting for A rather than B, is not to determine whether a particular Bill shall, or shall not, be passed, but whether the member of a particular party shall, or shall not, keep or acquire, office."

He then illustrates this difference by the general election which followed on the dissolution of the Imperial Parliament in 1831. All will know that the agitation for reform was at that time on. The Reform bill was the absorbing question which the electors had to deal with and the well known phrase was used "We want the bill, the whole bill and nothing but the bill." These were the words, the actual words, of the people, but because the simple issue of the actual bill had not been submitted to the electors in the form of a referendum the bill was afterwards passed by Parliament in many important particulars different from the bill intended by the electors.

"An election," Professor Dicey says, "must be a decision on general policy. It is usually in England an answer to the question, not whether a particular bill shall become law, but whether a given set of men shall govern the country. It were difficult in any case to keep clear from each other questions of persons, of policy, and of legislation." He then describes the confusion of issues in a general election and says:

> "Contrast this state of things with the position of the Swiss people when appealed to by means of the Referndum. The appeal is exactly what it purports to be, a reference to the people's judgment of a distinct, definite clearly stated law. Every "Bill" laid before the Swiss for their acceptance has, be it again noted—for this is a fact which can hardly be too strongly insisted upon—passed through both Houses of the Federal Parliament. It has been drafted by the Federal Ministry or Council; it has been the object of ample discussion; its fair consideration has been or certainly may be, secured by all the safeguards known to

the Parliamentary system. The Referendum does not hurry on a single law nor facilitate any legislation which Parlimentary wisdom or caution disapproves. It merely adds an additional safeguard against the hastiness or violence of party. It is not a spur to democratic innovation; it is a check placed upon popular impatience."

Referring to certain constitutional objections taken to the referndum, Professor Dicey say: "*This line of attack on the principle of an appeal to the people is an assault upon the foundations of popular government.*"

These are the words of this eminent authority and there is no higher authority living on constitutional matters. This attack on the referendum, this line of attack upon the principle of an appeal to the people—that is to say, an attack on the referendum—is an assault upon the foundation of popular Government. (cheers) How do these few words square with the hour of contemptuous ridicule of this so-called un-British institution that we have had from the honourable gentleman this afternoon.

Goldwin Smith vs. Goldwin Smith.

But he dwelt at length upon the contributions of Prof. Goldwin Smith. That gentleman is a distinguished and a learned writer, as all will admit. But if he is distinguished for one thing more than another it is the well-established reputation he possesses as a severe and destructive critic. I do not remember in my own individual experience of ever having read anything from the pen of that eminent gentleman that had much approval of anything that was ever done by the Legislators in either House on either side or by anyone. He revels in criticism and the keener the criticism no doubt the more eminently satisfied he is himself with the performance; and I am not saying that disrespectfully because, in common with all, I have always been a great admirer of the gentleman for his ability, and the literary graces which we must admit flow from his pen when, from time to time, he writes. But I had the good fortune the other day to stumble upon some of his utterances, not of very recent date, not within the past few days, but some time ago when, in cold blood, like the Premier, he was writing an article without having in mind the particular position or dilemma of the Ontario Government—when he was writing without the concrete case in his mind of the Ontario Government in a "hole" or in a "fix" as our opponents have been in the habit of saying. What did he say in 1887, and that is a good while ago? In the *Contemporary Review*, he writes:—

"It is almost appalling to think what changes, not political or legal only, but social and economical, may be made by the single vote of a Provincial Legislature, composed of men fit perhaps to do mere local business, such as comes before a county council, but hardly fit for the higher legislation, especially since the choice of men for the local legislatures has been limited by the Act which

prevents members of the Dominion House from sitting in a local House also."

Mr. Speaker, we have been accustomed to think here that, although perhaps not so pretentiously or ostentatiously important, we were quite equal to the general complexion of the House of Commons. We have been flattering ourselves here that in this Legislature were to be found some men of pretty sound common sense, and that too on both sides of the House, and that though we are selected from Ontario only and not the Dominion at large, we have in our members men of excellent ability, well fitted to take their places in any Company in any deliberative assembly in this Dominion. He goes on to say:—

> "The laws of property, or the political and legal relations of the sexes, as well as the distribution of political power, may be changed in a night, and the structure of society may thus be fundamentally altered at a single sitting, and upon an almost momentary impulse, or under some purely sectional influence, by a narrow majority in a House, the most mature and unbiased judgment of which upon such questions would be as far as possible from being conclusive." (Ministerial laughter.)

Well that is pretty severe. (Renewed laughter.) "Our most mature judgment as far as possible from being conclusive." And yet will anyone tell me to-day that he, the Professor, does not think there is some necessity for a referendum on the prohibition question. Then he goes on:—"The submission of constitutional amendments to the people is a most important safeguard. (Ministerial applause.) The people at all events cannot be lobbied, wheedled or bulldozed. It is not in fear of losing *its* election if it throws out something which is supported by the Irish, the prohibitionists the Catholic or the Methodist vote. (Ministerial laughter.) The reform is one which, if Canadian Confederation lasts, ought to be introduced without delay." (Long continued applause.)

I am rather thankful to the professor for what he has said. I think perhaps his remarks which have been read by me afford about as conclusive reply to the bulk of the Opposition leader's argument this afternoon as could be produced by me by hours of labor which I have not had the privilege of devoting to the preparation of the remarks which I am endeavoring to deliver. It is true in his recent utterances the force of that article, an extract from which I have read, is sought to be lessened by his insisting that there should be the introduction into our constitution of general provisions for the referendum with all machinery and safeguards, and so on. But, surely, it is a truism that if we have the power to change our constitution and make the referendum an essential feature of that constitution, we have the power to enact here *pro re nata* the referendum in connection with this or any other great public question. That is just about as true as the old axiom that the whole includes the part. (Hear, hear.)

More Pro-Referendum Authorities.

Now what does Prof. Bryce say—an authority which will be very much respected. Probably no keener observer of the working of different constitutions in different countries can be found than Prof. Bryce. In his "American Commonwealth" he said :—

> "The legislator may be subjected by the advocates of women's suffrage or liquor prohibition to a pressure irresistable by ordinary mortals; but the citizens are too numerous to be all wheedled or threatened. Hence they can and do reject proposals which the legislature has assented to. Nor should it be forgotten that in a country where law depends for its force on the consent of the governed, it is eminently desirable that law should not outrun popular sentimeat, but have the whole weight of the people s deliverance behind it. A brilliant, though severe, critic of Canadian institutions deplores the want of some similar arrangement in the several Provinces of the Dominion."

Professor Bryce then goes on to cite the passage quoted by me a few moments ago from Professor Goldwin Smith's article in the *Contemporary Review.*

Again, the historian Lecky is one of the numerous advocates of a free use of the referendum in matters of legislation. In his book "Democracy and Liberty" we have the following :

> "In the days when the balance of power between the different elements in the Constitution was still unimpaired, when the strongly organized conservative influences of class and property opposed an insuperable barrier to revolutionary change such a distinction might be safely dispensed with. In the conditions of the present day, no serious thinker can fail to perceive the enormous danger of placing the essential elements of the Constitution at the mercy of a simple majority of a single Parliament, a majority perhaps, composed of heterogeneous and discordant fractions combined for a party purpose, and not larger than is required to pass a Bill for regulating music-halls or protecting sea-birds' eggs."

Again, let me quote a more recent utterance of Lecky. In his "Map of Life," 1900, he says :—

> "Not many men who have had any practical experience in the management of men would advocate a complete suppression of the drink trade and still fewer would put it on the basis of complete free trade altogether exempt from special legislative restriction. To responsible politicians, the course to be pursued will depend mainly on fluctuating conditions of public opinion. Restrictions will be imposed, but only when and as far as they are supported by a genuine public opinion. It must not be a mere majority but a large majority ; a steady majority; a genuine majority

representing a real and earnest desire and especially in the classes who are more directly affected. Not a mere factitious majority such as is often created by skilful organization and agitation; by the enthusiasm of a few confronting the indifference of the many."

Highest British Authorities.

Is not this authority, is this not respectable authority, for the position that the Premier took the other day, and that we, on this side of the House contend, is a reasonable position to take? Do honourable gentlemen want me to pile up authority upon authority, still further in vindication of the principle which we contend is the only safe principle we can act under in connection with this great question? I continue for a short time longer. Our Premier cited a speech of Lord Salisbury in London, on the 29th of May 1894, proclaiming his adhesion to the referendum as a great bulwark of the constitution. In 1894, no very recent date, about the time when this question was being discussed on different hands by many British Jurists and Publicists, when it was a question discussed in learned articles, the result of which has been what I have already quoted, the conclusion was come to that the Referendum is inherent in the British Constitution. Then followed the formal adoption of the referendum as the main plank in the platform of the Unionist Party in the general election of 1895. (Cheers). A plank of the great platform of the great Unionist Party, I repeat, (Renewed Applause). And yet we are told, over and over again, by the honourable gentleman, all the afternoon and again this evening, that this is un-British, and that no authority can be cited for such a thing, and he called it a "thing" for no language could be found by the honourable gentleman adequately to express his contemptuous disapproval of the "thing".

Mr Whitney—Hear, hear.

Mr. Gibson—It was so extreme——

Mr. Whitney—Inexpressible.

Mr. Gibson—I have difficulty in finding language to describe his indignation.

Mr. Whitney—I find it so myself.

Mr. Gibson—Otherwise he would not have used the plain Anglo-Saxon monosyllable "thing".

Mr. Meredith an Advocate of the Referendum.

Now, let us come nearer home and let us see what my honourable friend's predecessor in office has said on this important question. On May 21st, 1894, Sir William Meredith, then Mr. W. R. Meredith, leader of the Conservative Party and of the Ontario Opposition, made a speech at London, setting forth his policy for the elections to be held in June of that year. In the municipal elections of 1894 a plebiscite had been taken, and a very large majority given for prohibition. On this subject Mr. Meredith said:

"If it shall be determined that there is jurisdiction in the Local Legislature to deal with this question of the liquor traffic, then it will be the duty of any Government which is in power in Ontario to bring in a bill and pass it for the purpose of carrying into effect what has been determined to be within the jurisdiction of the Legislature. But it seems to me that any such law as that should be an effective law, and should have no result that would be disastrous to the interests of temperance throughout the country. And, therefore, I think that it would be decidedly in the interests of the whole community that any measure such as that, before it should become law, should be again submitted to the people, in order that they should have an opportunity of pronouncing yea or nay upon it."

This appears to be a pretty straight advocacy of the referendum, which Mr. Meredith's successor has to-day characterized as "un-British," "unconstitutional" and a "thing." (Ministerial cheers.)

Australian Precedents.

Now I come to Australia. The honourable gentleman dwelt at very considerable length on the history of the referendum in Australia. I have to say that he should have gone farther. He should have either read more or read what he did read more carefully, before making the statements which he made in this House today, because he has been inaccurate and, if it is not unparliamentary and it is not intended disrespectfully by me, he was grossly inaccurate.

Until 1894 the referendum does not seem to have been used by any of the Australian Colonies. In that year the Governor of Victoria issued a Royal Commission to seven of the leading public men representing all shades of politics to consider and report if any advantageous change could be made in the then present mode of conducting the business of Parliment and specially as regards the constitutional practice by which Ministers of the Crown are appointed. The Commissioners reported (and I believe Pomeroy, the book which the honorable gentleman had in his hand, refers to the report) recommending the referendum, as to which they say: "The Commission are strongly impressed with the advantages of the referendum. It provides a simple method of obtaining an accurate expression of the popular will on any question." This recommendation was acted upon by the Government not only of Victoria but of four other of the Australasian Colonies. Government Bills providing for a referendum in certain cases were brought in in each of the five Colonies The New Zealand Bill contained a provision by which both Houses might by a resolution submit any motion or Bill to the vote of the electors.

Referendum not a New Feature.

This is not the Commonwealth Bill to which my honourable friend referred. I am now speaking of what took place years ago in 1894 and

1895. The referendum has been a part of their system for all these years. It has been in practice from 1895 onwards. It has been one of the features of various Australian Bills. It is interesting to find that in 1896 the Premier of New South Wales, in connection with a referendum which was then being enacted or authorized citied as a reason the application of the principle to liquor legislation in the Dominion of Canada. In 1896 in South Australia on the authority of a parliamentary resolution a referendum was taken on the question of unsectarian education and that system was supported by a very large majority. We can all understand that there are certain questions regarding which there ought not to be a referendum, and these are the most numerous class of questions or subjects which we deal with in our ordinary political experience. On the other hand, as will be admitted, there are other important questions which in their nature should be and are proper subjects for a referendum, and the question of prohibition is one of them just as the question of sectarian or unsectarian education which I have referred to was considered to be a fit subject for a referendum in South Australia.

Australian Constitution Full of Referendum.

Then I come to the great question of the federation of the Australian Colonies. The Bill for this purpose was prepared by the Colonies themselves and was built up on a series of referenda separately passed by the Colonies. The honourable gentleman has told us that provision was made for the case only of a deadlock between the Upper and Lower Houses in the Commonwealth. He not only dwelt upon that once, but he returned to it and argued that it was no authority or precedent for us to follow because it applied only to the case of a deadlock between the two Houses of Parliament. Now the honourable gentleman, as I said a little while ago, should either have read further or read a little more carefully because he is entirely wrong. (Applause.) The Commonwealth Act provides that all Constitutional questions, questions of amendment of the Constitution, not only may but shall be submitted to the people, not simply in the case of a deadlock between the Houses of Parliament but in all cases whether both Houses have by majority agreed to the submission or not. (Renewed applause.) Now that is rather a different aspect of this Australian case as a precedent for what we are doing. Section 57 of that Act provides for the case of a deadlock between the two Houses of the Commonwealth Parliament. But section 128 goes far beyond that. The Commonwealth Act ranges over an immense number and variety of subjects of legislation and section 128 enables the Commonwealth Parliament itself without Imperial legislation to alter the Commonwealth Act by a referendum. The referendum is by no means limited to the case of a deadlock between the two Houses. Even if the two Houses agree, the referendum is still essential.

Endorsed in Great Britain.

But let me go a step further by calling attention to the disposition

and spirit in which this constitution of the New Australian Commonwealth was received in England by the Parliament of the Mother Country and giving the House the benefit of a few expressions from the most eminent of the public men in England as to this measure which is brim full of referendum from beginning to end. The principle of referendum pervades the constitution of the Australian Commonwealth.

So far from being thought un-British or alien to the Constitution it received universal commendation. The fact that the Bill itself had received the sanction of referenda in Australia, gave it so much weight and solemnity that the Imperial Parliament was most reluctant to alter a single word in the whole Act. Mr. Chamberlain in introducing the Bill into the Commons gave expression to this feeling. Sir Henry Campbell-Bannerman the leader of the Opposition thought that the Bill should be passed absolutely unaltered as being "a covenant and contract entered into by the Colonies themselves." Sir Charles Dilke said: "The Bill before us is presented with even a higher sanction than the [Australian] Federal Council Bill of 1885. It has passed, as no other Constitution in the British Empire has passed, through the ordeal of a reference to the whole people whom it concerns."

Mr. Haldane, K.C. (M.P., for Haddingtonshire) well known to Canadians as a leading Counsel in Constitutional cases before the Privy Council, said:

> "This Bill is permeated through and through with the spirit of the greatest institution which exists in the Empire, and which pertains to every constitution established within the Empire—I mean the institution of responsible government, a government under which the executive is directly responsible to—nay is almost the creature of—the Legislature. . . . On this occasion, we establish a constitution modelled on our own model, pregnant with the same spirit, and permeated with the principle of responsible government. Therefore what you have here is nothing akin to the constitution of the United States except in its most superficial features. It is really a reproduction in Australia of the British Constitution upon a large and noble scale."

Hon. Edward Blake Approves.

On the second reading in the House of Commons of the Common wealth of Australia Constitution, Mr. Asquith, K.C., (M.P. for Fifeshire E.) known to all the world as a great jurist, spoke eloquently to the same effect. Our own Mr. Blake, K.C., (M.P. for Longford S.) asked the House to "recognize clearly what a difference 33 years has made in our methods and in the advance of popular rights." He related how the Nova Scotia Legislature passed an address for the Canadian Union, but a poll of the people of Nova Scotia had not been taken on the subject and they petitioned the Imperial Parliament against the Union. The Imperial

Parliament acted upon the voice of the Nova Scotia Legislature and passed the B.N.A. Act. Mr. Blake cited this case. He said:—

> "because it shows the vast importance of obtaining and acting upon recognized popular opinion when expressed in the genuine manner by the people concerned. The circumstance that Nova Scotia had not the opportunity which the Australian States have had of speaking, injured the success of Federation for at least twenty years, and has been got over only within a recent period. . . . Now all the elements lacking then are present here. You have the march of popular Government and administration shown here. You have the methods by which the popular sanction should be obtained laid before us. You have popular resolutions and authority from Legislatures. You have freely elected conventions framing the constitution. You have acts authorizing popular referenda, and you have popular sanction thereupon. You have the text of the Bill so framed and so approved; and it is upon that we act. There never was an instance of such long consideration, and such deliberate sanction, and thus the case for absolute acceptance here is infinitely stronger even than it was in the case of Canada."

These are expressions from the most eminent men in the House of Commons and the thread which runs through them all is that the referendum principle is inherent in the British constitution.

In the House of Lords.

Now turn to the House of Lords. Lord Selborne in moving the second reading of the Commonwealth of Australia Constitution Bill began by calling attention to the referendum clauses viz.: Section 57 and 128. He then said:

> "The proposals in the Commonwealth Bill are more truly democratic than those of the United States. . . . Under this Bill the final arbiters on a question of a change of constitution are the people—the voters." Then passing to the referendum in Section 57 (Deadlock between two Houses) Lord Selborne said "the plan in the Bill has this merit: that it goes to the root of the whole matter and refers the final decision to the electorate."

> Lord Selborne further said of the Bill: "It strictly follows the English plan of uniting the Legislature to the Executive and in taking care that the government of the day is armed with the full authority of the people who elect the majority in the Chamber. . . . The constitution of Australia strictly follows the English plan. There can be no doubt that under it the Government of the Commonwealth of the day will represent the opinion of the Australian people at the moment of the last election. . . . It is in strict accordance with the political instincts of our race that our machinery should be of such a kind that it can be changed

and developed as the times and conditions alter, and that we should not now attempt to stereotype a particular machinery which our descendants may not be able to change or alter, however much the condition of the country required it." (Loud applause.)

These words could be delivered by that eminent authority to this House sitting here at this moment with reference to the Bill now before this House. (Renewed Applause.)

A Constitutional Right.

Now as to the constitutional right of this Province to make enactments subject to the ratification of a referendum:

Within its own sphere of Legislation, Ontario has powers as plenary as those of the Imperial Parliament itself. In his treatise on The Law of the Constitution, Prof. Dicey says: "The Colonial Legislatures, in short, are within their own sphere copies of the Imperial Parliament. They are within their own sphere sovereign bodies; but their freedom of action is controlled by their subordination to the Parliament of the United Kingdom." He cites the Colonial Laws Validity Act which he styles "the charter of colonial legislative independence." Section 5 of that Statute enacts "that every representative legislature shall, in respect to the colony under its jurisdiction, have and be deemed at all times to have had full power to make laws respecting the constitution, powers and procedure of such legislature." That Act is still in full force and will be included in the compilation of Imperial Acts in force in the Province going through the House at the present Session. I am not now quoting the words of any Jurists or authority however eminent; I am quoing the words of a British Statute. (Applause.)

Power to Alter Constitution.

The Provinces of Canada have in addition the express provisions of our British North America Act section 92:

"92. In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

"1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province except (one sole exception) as regards the office of Lieutenant-Governor." Yet the words of the honourable gentleman must still be ringing in the ears of the members of this House, when he declared this afternoon that we had no authority to amend our constitution in this respect.

Mr. Whitney—I did not make such a statement. If I did, it was quite unconsciously.

Mr. Gibson—It must have been, I think. (Ministerial Laughter). I think he was carried away, because he must have known, as every member of the House knows, that we have this power.

Mr. Whitney—Our whole contention is that you will not alter it.

Mr. Gibson—Then the reply is that to the extent of this measure before the House, we are altering it. (Ministerial applause). If we have the power by formal act or programme to change our constitution, to say that upon questions of prohibition, sectarian education, separate schools, or other questions which would be regarded as reasonably proper subjects for a referendum then I say we have the right and power, and I say it with all the emphasis of which I am capable, to submit this question in the manner in which we are doing to the people and it is entirely within the terms of our constitutional right. (Applause).

The plenary powers of the Provincial Legislatures under the B.N.A. Act have been affirmed and reaffirmed by the Privy Council. In Hodge v. The Queen 9 App. Cas. 117 the Privy Council decided that the B.N.A. Act by section 92 conferred on the Legislative Assembly of the Province "authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parlimant in the plenitude of its powers possessed and could bestow. Within these limits of subjects and area the Local Legislature is supreme and has the same authority as the Imperial Parliament or the Parliament of the Dominion." This passage was cited and followed by the Privy Council in Powell v. Appollo Candle Company 10 App. Ca. 289, where it was said that Reg. v. Burah 3 App. Ca. 889 and Hodge v. The Queen settled the supremacy of a Colonial Legislature within its own sphere. Still more recently the same passage from Hodge v. The Queen was cited and followed by the Privy Council in Liquidator of Maritime Bank of Canada v. Receiver-General of N. B. [1892] A.C. at 442, where Lord Watson, delivering the judgment of the Privy Council, said: "In so far as regards those matters which by section 92 are specially reserved for Provincial legislation, the Legislature of each Province continues to be free from the control of the Dominion and as supreme as it was before the passing of the [B.N.A.] Act."

Conditional Legislation.

In Reg. v. Burah 3 App. Ca. at 906 the Privy Council decided that Statutes passed *to take effect conditionally are entirely within the competency of the Legislature.* Lord Selborne, in delivering judgment, said:—

> "The proper Legislature has exercised its judgment as to place, person, laws and powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' Judgment) be well exercised either absolutely or conditionally," (applause) adding that "the British Statute Book abounds with examples of conditional legislation."

In Russell v. The Queen 7 App. Ca. at 835—which was a case on the Scott Act, the prohibitory and penal provisions of the Act were to come into effect only on a petition of a majority of the electors; and it was contended that this vitiated the Act. But the Privy Council reiterating what it had decided in Reg. v. Burah, held the legislation valid, saying: "Parliament itself enacts the condition and everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is in many cases convenient and is certainly not unusual, and the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency. Their Lordships entirely agree with the opinion of Chief Justice Ritchie on this objection." Now what do these expressions as to conditional legislation mean? Remember I have been reading from the language of the highest court in this realm, the court of last resort. Statutes passed to take effect conditionally, and we are passing a statute to take effect conditionally, (cheers) are entirely within the competency of the Legislature. Conditional legislation is not an uncommon thing. We charge ourself with the responsibility of this measure and when I say that, I say subject to the condition which we attach to this measure and which is an essential part of the measure.

Not Un-British.

Now, Mr. Speaker, I claim to have made my point that in the first place the referendum is not un-British, that it is essentially British, which is a direct contradiction of the propositions laid down by the honourable gentleman throughout his speech. I claim in the next place that I have established the proposition that we have ample power to introduce the referendum either as a permanent factor in our constitution, or incidentally, as we are doing here to day. (Prolonged Ministerial cheers.) And apart from any question of referendum in the technical sense of the term I claim that I have shown that in passing this Bill subject to the provision that it shall be approved of by the people we are simply enacting conditional legislation which is not an unfamiliar course in legislative bodies in various parts of the Empire including the Mother Country itself. There are precedents, numberless precedents, for what we are doing in that respect, and consistently with the principle of responsible Government, we should assume the paternity and responsibility for the measure which we have put before the House. We do so in the fullest sense of the term. We say that if the conditions on which we base this legislation are established to exist, that if it shall be established that the conditions required by the terms of this legislation exist, that there is such a volume of public opinion on this question as will result in a certain vote being cast in favor of the measure, it will then have passed, and the measure being ours we are responsible for it and we are responsible for the enforcement of its provisions.

Prohibition not to be Dealt With Offhand.

One would suppose that this question of prohibition was such a light matter that the Government should deal with it in an offhand manner quite irrespective of whether prohibition formed the subject of discussion at the last general election or not, quite irrespective of what the representatives in this House think on this subject. I wonder if the honorable gentleman knows what his own following think on the abstract question of prohibition. Certainly the members of this House were not elected on any such issue as that and that reason alone, if there were no other reasons, is a good reason why the matter should be submitted to the people. But all these writers, all those who have alluded to the referendum, or almost all of them, refer to this particular question of prohibition as a fit subject for consulting the views of the people thereon through the medium of a referendum. (Applause). It goes without saying, Mr. Speaker, that we would inflict a wrong on this Province, we would inflict a deadly blow on the best interests of the temperance cause, if we allowed this bill to be enacted by whatever majority may happen to be got for it no matter how inadequately small that might be. I put a case to the honorable gentleman. Supposing the bill referred, and not more than 25% of the voters came out to vote one way or the other you would have a mere fraction, a small fraction only, of the entire electorate which would give no adequate idea of what the preponderance of the views of the people might be on this subject. We would do a wrong to the best interests of temperance and the Government differ from the honorable gentleman on that point. We draw the lines sharply on that point. He goes to the country with a declaration that on the referendum the bare majority of those who happen to vote should carry the measure, that it should be imposed upon the people notwithstanding that at the same time there might be a vast preponderance or majority of the people who think we are not ripe for any such legislation. That would be a very serious matter.

Let me remind the honourable gentleman of some of the expressions which the judgment of the Privy Council contains,—The Privy Council on the Manitoba Act, where they warn the Province as to the extreme gravity of the legislation. The Privy Council said :

> "It is not necessary to go through the provisions of the Act. It is enough to say that they are extremely stringent—more stringent probably than anything that is to be found in any legislation of a similar kind. Unless the Act becomes a dead letter, it must interfere with the revenue of the Dominion, with licensed trades in the Province of Manitoba, and indirectly at least with business operations beyond the limits of the Province."

This admonitory part of the Privy Council judgment has to be taken with the rest; though so far it has been generally overlooked. In this Province the community is divided,—it is impossible to say with any pre-

cision in what proportion,—between the consumers and the non-consumers of intoxicating liquors For their indulgence, in what is at the least a luxury, the consumers are specially taxed, and rightly so,—the tax being collected by the State in the form of licenses, or of excise and import duties all of which are ultimately borne by the consumers. The aggregate of the total tax thus paid by liquor consumers is very large. The effect of any real prohibition, must of necessity, be to transfer to the whole community the equivalent of the taxation that now falls on liquor-consumers alone. This is quite apart from any burden thrown upon the whole Province for the compensation of business-interests injured by prohibition. So that prohibition requires of non-consumers as well as of consumers self-denial and self sacrifice. Prohibition demands of the consumers to give up what they regard as comforts of life, and to surrender what they regard as personal freedom. Prohibition requires of the non-consumers to pay increased taxation. Unless, therefore, there is in the community a strong and settled purpose to enact, and when enacted to support and enforce this Prohibition Act, any legislation would do more harm than good.

Between the Extremes.

These are the views which I think the vast majority of the people of this Province entertain. There are two extremes in this matter, the advanced temperance advocate and those engaged immediately in the liquor traffic. These represent the extreme views one way or the other on this question, but I believe the vast majority of the community, lie between these two extremes, and they are to be taken into account. They help to form public opinion on this subject. We must all respect the earnest, the self denying efforts of those who have been the advanced guard in the promotion of temperance. They are away ahead of the general community in their views and in what they believe to be the present requirements of good legislation. I am not deprecating the fact that there is such an advanced guard. I believe there always has to be in connection with reforms and with useful changes those who are enthusiastic, who are decidedly in advance of public opinion, but who are from stage to stage, step to step, being followed up by the vast body of the electorate, slowly perhaps at times, but if their cause is right, and the temperance cause is right, by sure and steady steps. (Cheers.) They are liable to be impatient, because perhaps a large proportion of the population do not come up along with them and stand shoulder to shoulder with them and evince the same amount of enthusiasm which they evince at all times in connection with the reform which is dear to their hearts. However, I, at all events affirm on my own behalf that in nothing I have said to-day nor in any thing that I have ever said do I feel a disposition either to criticize or to disparage the praiseworthy efforts of those who are the leaders, the advanced leaders, in the cause of temperance.

A Reasonable Proposition.

But the responsibility of consulting the views and adopting the general average of the views of the well thinking mind on this subject, is what we have to have regard to, and, Sir, I believe that in connection with the

measure that is now being submitted to this House, the general opinion in this Province to-day is that the Government have laid before the country an eminently reasonable proposition. I have endeavored not to unnecessarily repeat arguments used by the Premier in his statement to the deputation the other day and in his speeches on this Bill. But I want to say that when the honourable gentleman protests in a loud and denunciatory manner against the Premier's addresses in introducing the Bill and moving the second reading this afternoon, and his reply to the temperance deputation on the ground of want of accuracy of statement, moderation of statement, or reasonableness of argument, he is the only gentleman I have ever heard express that view. (Cheers.) If on one occasion more than any other the Premier's utterances on any subject in this House have commended themselves to my mind, for their reasonableness, their moderation and, at the same time, for firmness of tone, these characteristies apply in a marked degree to his deliverances on this subject. I shall not take the time to reply to some of the carping criticisms of the honourable gentleman with reference to the Premier's record, but offhand I am justified in saying the poverty of criticism is very excellent testimony in favor of that record. (Cheers.) What do his criticisms consist of? He went back to 1877 when Mr. Shultz introduced a resolution into the Dominion House on the subject of Prohibition. Everyone knew that at that time there were looming up questions on the subject of jurisdiction which had to be settled and in failure of the settlement of which it would have been idle to have adopted a prohibitory law either there or here. The Premier's view throughout has been that the jurisdiction should be settled before any extreme measure of that nature should be adopted. One need not refer to the prejudicial effects of the McCarthy Act enacted in 1883. If we do not have behind our measure that public opinion which is so essential to the enforcement of any law, and law of this nature especially, we will put back the cause of temperance a generation at least. (Hear, hear.)

The honourable gentleman criticized the Premier's temperance record during this period, but forgets that while our population has been increasing, our licenses have been cut down by 50 per cent. at least. He also forgets that, admittedly, there has been an almost marvellous improvement in the habits and the customs of the people, the result of the advancement and practical adoption of temperance views and sentiment. So I could answer every item of his criticism of the Premier's speech, but I refrain from doing so for I fear that I have detained the House longer than I should. I have endeavoured with a desire not to be tedious to give the thoughts of others than myself, the arguments of eminent men, who uninfluenced by the present situation, wrote in calm deliberation and expressed their views regarding constitutional questions and by whose views on these questions of British precedent and the British constitution we can be safely guided. (Applause.) I thank the House for listening to me so attentively, and trust, that whatever the result of this discussion may be, the Bill will be regarded by the people at large as the outcome of an earnest effort on the part of the Government to deal fairly and reasonably with this important question. (Loud and continued applause.